

Before the
Federal Communications Commission
Washington, D.C. 20554

FEB 27 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review -)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

**COMMENTS OF AOL TIME WARNER INC.
ON PETITIONS FOR RECONSIDERATION**

AOL Time Warner Inc.,¹ by its attorneys, files these comments on the Petitions for

Reconsideration of the Commission's *Report and Order and Second Further Notice of Proposed*

¹ AOL Time Warner is the world's first Internet-powered media and communications company, whose industry-leading businesses include interactive services, cable systems, publishing, music, networks and filmed entertainment.

Rulemaking in the above-captioned proceeding.² AOL Time Warner strongly supports the Commission's decision to promote fair, accurate and equitable cost recovery by limiting the manner in which common carriers may recover universal service contributions from their customers. AOL Time Warner urges the Commission to reject petitions that seek reconsideration of the pass-through limitations contained in the *Report and Order* and, in addition, to prohibit carriers from imposing unreasonable and discriminatory administrative charges on customers.

I. INTRODUCTION AND SUMMARY

In its *Report and Order*, the Commission concluded that, beginning April 1, 2003, telecommunications carriers may not recover their federal universal service contribution costs through a separate line item on the customer bill that includes a mark-up above the relevant contribution factor. The Commission noted that limiting the federal universal service line item charge to an amount no higher than the contribution factor will increase billing transparency and decrease the confusion for consumers about the amount of universal service contributions that are passed through by carriers. Carriers are allowed flexibility to recover legitimate administrative costs from consumers by other means, including either a separate administrative charge for universal service-related collection and remittance activities that is not characterized as a universal service charge or pass-through rates.

² In the Matter of Federal-State Joint Board on Universal Service. 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan. Local Number Portability and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Sue, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing Format, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (“*Report and Order*”).

Several parties seek reconsideration of the Commission's decision regarding the pass-through of universal service contribution amounts. Nextel and Verizon Wireless request that the Commission remove the recovery restrictions from CMRS carriers. AT&T requests that carriers be permitted to recover uncollectible universal service charges from other customers. SBC suggests that the April 1, 2003 deadline be deferred until the *Further Notice* is completed and that carriers be permitted to average pass-through amounts within customer categories. USTA requests that the limitations on the recovery of universal service administrative fees be eliminated and that the Commission clarify that all costs associated with the administration of universal service are legitimate. USTA also supports averaging of uncollectible charges and adding that amount to the contribution factor charged to certain categories of customers.

AOL Time Warner urges the Commission to reject these proposed modifications and to reaffirm its decision imposing reasonable limits on carrier discretion to pass-through universal service contribution charges. These limitations were adopted to reduce the discriminatory practices and the customer confusion resulting from the flexibility permitted carriers under the previous rules.³ None of the petitions provide any new or compelling evidence to warrant reconsideration of the Commission's decision.

Ad Hoc requests that carriers be permitted to implement an administrative cost line item charge no higher than one percent of the contribution amount. USTA also suggests that recovery of administrative costs be subject to a cap. AOL Time Warner agrees that the Commission must limit the recovery of administrative costs ~~for~~ the same reason that the Commission has limited the pass through charge: to avoid the abuse of carrier discretion that has resulted in arbitrary and discriminatory customer charges. The Commission has taken steps in the *Report and Order* to

³ *Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 9199, 921 1 (1997).*

minimize administrative costs and the Commission notes that such costs will not be significant.

Limiting the administrative line item to one percent of the contribution amount as recommended by Ad Hoc will allow recovery of legitimate costs without rewarding carrier inefficiency.

II. DISCUSSION

The Commission's decision limiting the pass-through reflects a reasonable response to the record of carrier abuse of discretion discussed in this proceeding. As the Commission explains in the *Report and Order*, pass-through charges paid by customers often significantly exceed the amount of the universal service contribution factor! In fact, the Commission notes that in some cases, the pass-through charge bears little or no apparent relationship to a customer's interstate telecommunications use. Some carriers arbitrarily exempt certain customers from pass-through charges and recoup those amounts from other customers. In addition, the Commission expressed concern that the flexibility of the current rules enabled carriers to include wholly unrelated costs in their pass-through charges. As AOL Time Warner observed in its earlier comments, such flexibility also provided an opportunity for carriers to force their competitors, including entities that may **also** compete for some telecommunications services, to pay an unreasonable share of the universal service burden.⁵

The Commission's decision in the *Report and Order* eliminates the arbitrary and discriminatory application of pass-through charges by placing reasonable limits on carrier recovery of universal service contribution amounts. The previous rules did not provide sufficient guidance as to what was acceptable and carriers used their discretion in effect to change the prices of telecommunications services arbitrarily and to allocate costs among customers absent any thought to cost causation. As the Commission points out, the complaint process was not an

⁴ *Report and Order* at ¶¶ 46-47.

⁵ Comments of AOL Time Warner at p. 3 (filed April 22, 2002)

effective deterrent and would not provide an efficient way to resolve the widespread nature of the discriminatory and unreasonable **practices**.⁶

The petitions present no new arguments and simply seek to reinstate the boundless discretion previously enjoyed by common carriers. Carrier behavior dictates that such maximum flexibility must not be resurrected. The limits on the pass-through contained in the ***Report and Order*** reasonably prevent carriers from attempting to use *the* pass-through as a means effectively to raise rates or to discriminate against certain services, customers or classes of customers. Carriers are permitted to recover their administrative costs through rates or through a separate line item that is not attributable to universal service. Contrary to *the* assertions of many petitioners, the decision does not prevent legitimate cost recovery and the Commission has taken other steps to reduce administrative costs and address issues raised in the petitions by eliminating the lag between *the* accrual and assessment of revenues and allowing carriers to reduce their assessable revenues by an uncollectible percentage

In order to prevent the same abuse of discretion that characterized the pass-through rules, the Commission should ensure that carriers are limited in the amount that they can charge *their* customers to recover administrative costs associated with the collection and remittance of universal service contributions. The ***Report and Order*** does not provide sufficient guidance and, given customers' experience with the pass through charges, discriminatory and arbitrary administrative charges are likely to appear on customer bills without specific limits. AOL Time Warner supports Ad Hoc's petition to limit the administrative charge to one percent of the contribution amount.' As noted above, the Commission has also instituted measures to reduce

⁶ *Id.* at ¶ 49.


⁷ USTA also supports a cap on the recovery of administrative costs. See, USTA Petition for Partial Reconsideration and Clarification (filed January 29, 2003).

administrative costs and expects that such costs will not be significant. The one percent cap will provide sufficient cost recovery without rewarding carrier inefficiencies.

III. CONCLUSION

The Commission should not retreat from its decision to limit carrier **pass-through** of universal service charges, and must ensure that administrative charges are reasonable and legitimate. The previous rules allowed carriers to assess arbitrary and discriminatory charges on their customers and the petitions seeking to modify the pass through decision do not justify any changes. For the same reason, the Commission should approve those petitions seeking to cap the administrative charge. Such a result will ensure that universal service and associated administrative charges are assessed in a fair and reasonable manner and will eliminate customer frustration and confusion regarding universal service charges.

Respectfully submitted,



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Certificate of Service

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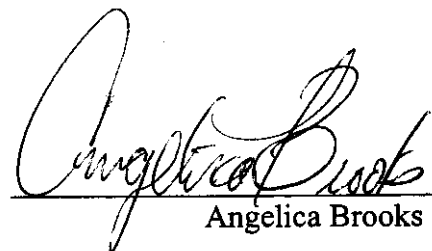
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